

CIVIL SERVICE COMMISSION MINUTES

July 16, 2003

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Sigrid Pate
Marc Sandstrom
Gordon Austin
A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
August 20, 2003

CIVIL SERVICE COMMISSION MINUTES
JULY 16, 2003

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
1,5,6,7,9,11,12,13	6,10,17	7	3,4
14,16,18			

COMMENTS Motion by Pate to approve all items not held for discussion; seconded by Austin. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Casillas: **Edmond Wollmann**, former Eligibility Technician, alleging gender, race, religion and retaliation discrimination by the Health and Human Services Agency.

B. Commissioner Sandstrom:

I. **Jodi Breton, Kimberly Brown, Chandra Carle, Steven Carver, Karl Eppel, David Hendren, Paul Johnsen, Michele Linley, Karen McKinley, Stacey Alyn McReynolds, Kelly Rand, Stacy Running, Robert Stein, Laura Tanney and Anne Marie Urrutia**, Deputy District Attorneys III, alleging political affiliation discrimination by the former District Attorney.

II. **Susan Martin**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney.

III. **Deborah Thomas**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney.

C. Commissioner Sandstrom: **Rick Clabby**, Deputy District Attorney IV, alleging political affiliation discrimination by the former District Attorney.

OPEN SESSION AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

1. Approval of the Minutes of the regular meeting of June 18, 2003.

Regarding Closed Session Item A: Commissioner Newman requested that his comments which he read at the June 18th Open Session Meeting be incorporated into the Minutes, verbatim. Commissioner Sandstrom requested that his oral comments at the June 18th Open Session Meeting also be incorporated into the Minutes, verbatim.

Motion by Newman to approve Minutes as amended; seconded by Austin. Carried.

AYES: Newman, Austin, Casillas
NOES: Sandstrom
ABSTENTIONS: Pate

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin: **William Hamilton, Jr., M.D.**, former Psychiatrist II, appealing an Order of Termination and Charges from the Health and Human Services Agency (HHSA).

Confirmed.

WITHDRAWALS

3. Commissioner Sandstrom: Fern Steiner, Esq., on behalf of **David Meyers**, Sheriff's Sergeant, appealing the selection process used by the Sheriff's Department for the classification of Sheriff's Lieutenant.

Withdrawn.

Question from Commissioner Newman: What is meant by the Department's position that a candidate for promotion will not be penalized for missing performance evaluations in the employee's personnel file.

Tom Reed, representing the Sheriff's Department, explained that existing performance evaluations will be used, only, and the department will assign no significance to missing reports. Therefore, there will be no "weighing down" of a candidate's score due to missing evaluations.

Motion by Newman to accept withdrawal; seconded by Sandstrom. Carried.

4. **Rori Mary Robinson**, Deputy District Attorney III, appealing the Department of Human Resources' (DHR) determination that she is ineligible to compete in the selection process for the classification of Deputy District Attorney IV.

Withdrawn.

DISCRIMINATION

Complaints

5. **John Neal**, Certified Nurse Practitioner, Sheriff's Department, alleging retaliation discrimination by the Sheriff's Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Tom Reed, representing the Department, explained that the Department was not in concurrence with staff's recommendation. He stated that this appeal does not fall within the definition of a discrimination, referencing Charter Section 901 and Civil Service Rule VI. He further stated that there are several years of allegations of retaliation by Mr. Neal (beginning in 1998), and that the filing of the alleged discrimination is untimely.

Larry Cook, Executive Officer, referenced Mr. Neal's complaint and stated that it appears there have been incidents that may have occurred within the last 60 days. He requested that Mr. Neal speak to the last 60 days, only.

Complainant, John Neal, stated that he has been put on severe work restrictions, and claims this is due to retaliation by the Department, stemming from a previous case before the Commission. Commissioner Sandstrom stated that he thinks it inappropriate that Complainant bring forth issues that have previously been addressed at a hearing.

Motion by Austin to accept staff recommendation; seconded by Pate. Motion failed.

AYES:	Austin, Pate
NOES:	Newman, Sandstrom, Casillas
ABSTENTIONS:	None

Mr. Neal's request for an investigation under the provisions of Civil Service Rule VI was denied.

6. Stephine M. Wells, Esq. on behalf of **Sue Tiu**, Child Support Officer, Department of Child Support Services, alleging discrimination based on race, national origin and disability, as well as retaliation and harassment by the DHR and the Department of Child Support Services.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

English Bryant, Sr. Deputy County Counsel explained that Complainant has also filed a tort claim against the County. Further, she stated that this matter appears to be a compulsory leave exam appeal in addition to the complaint for alleged discrimination, and that perhaps the main issue here is the compulsory leave appeal.

Larry Cook, Executive Officer, concurred with Ms. Bryant regarding the issue of an appeal of a compulsory leave exam, however, he explained, that the complaint clearly states allegations of discrimination, and as such, the Commission has no discretion, and the matter must be placed on an Agenda if it is timely. Mr. Cook offered to talk with counsel for Ms. Tiu to clarify the compulsory leave exam matter and the request for a discrimination hearing.

Motion by Sandstrom to continue this matter to the next Commission meeting (without prejudice); seconded by Casillas. Carried.

7. **Curtis Scott**, Deputy Sheriff-Detentions, alleging discrimination based on inappropriate use of confidential medical information by the Sheriff's Department.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Tom Reed representing the Department addressed the Commission stating that 1) Complainant initially submitted a Rule X Selection Process appeal, but was untimely; 2) thereafter complainant filed a Rule VI discrimination complaint. Mr. Reed contends that this matter does not fall within the guidelines of Rule VI, and believes it inappropriate that Mr. Scott is "rule shopping".

Mr. Scott addressed the Commission, stating that he officially became aware of the alleged discrimination on July 16, 2003, therefore he has a timely request for a discrimination investigation by OIA.

Motion by Sandstrom to approve staff recommendation; seconded by Casillas. Carried. Commissioner Newman assigned.

8. **Wendell Prude**, SEIU Local 2028, on behalf of **Jenice Hathaway**, former Senior Clerk, HHSA, alleging race discrimination by the HHSA.

RECOMMENDATION: Deny Request.

Staff recommendation approved.

9. **Mitchell McCormick**, candidate for Human Resources Analyst-General Option, alleging discrimination by the DHR. (See No. 16 below.)

RECOMMENDATION: Deny Request.

Mr. McCormick addressed this item as well as item no. 16 below. He stated that a position was filled internally and he was not given a fair opportunity. Appellant was a non-County employee candidate and feels he was discriminated against during the selection process.

Jessica Bryden, Sr. Human Resources Analyst, explained that the vacancy was filled utilizing the applicant pool and all proper procedures and rules were followed. She further stated that Mr. McCormick remains on the eligibility list; ranked according to his cumulative score.

Motion by Pate to accept staff recommendation; seconded by Casillas. Carried.

10. **Walt Schmidtke**, Park Ranger, Department of Parks and Recreation (DPR), alleging non-job-related factor discrimination (favoritism) by the DPR. (See No. 17 below.)

RECOMMENDATION: Continue to the Commission meeting of August 20, 2003 pending input from the parties.

Continued.

Findings

11. Commissioner Casillas: **Edmond Wollmann**, former Eligibility Technician, alleging gender, race, religion and retaliation discrimination by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on May 7, 2003, the Commission appointed A.Y. Casillas to investigate the complaint submitted by Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on retaliation, gender, race and religion discrimination, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Austin. Carried.

12. Commissioner Sandstrom:

A. **Jodi Breton, Kimberly Brown, Chandra Carle, Steven Carver, Karl Eppel, David Hendren, Paul Johnsen, Michele Linley, Karen McKinley, Stacey Alyn McReynolds, Kelly Rand, Stacy Running, Robert Stein, Laura Tanney and Anne Marie Urrutia**, Deputy District Attorneys III, alleging political affiliation discrimination by the former District Attorney. (See No. 14 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 15, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainants. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concluded that probable cause exists regarding Petitioners' allegations of political affiliation discrimination by the former District Attorney. The OIA reports contain sufficient information to convene a hearing under the provisions of Rule VI of the Civil Service Rules. The Investigating Officer concludes that a hearing under the provisions of Rule VI will be conducted; that Commissioners Marc Sandstrom and A. Y. Casillas be assigned as hearing officers; that all Petitions to Appeal Selection Process (Rule X) be granted, including Richard Armstrong, Joanne Evoy, Robert Kearney and the hearing be held in conjunction with the Rule VI hearing; that one hearing be conducted for all petitioners; that a pre-hearing conference be scheduled to take place July 30, 2003, at 10:00 a.m.; that all November 29, 2002 appointees be invited to attend and participate in, if they wish, the pre-hearing conference as well as any future hearings; that the Commission approve and file this

report with the appended OIA Final Investigative Reports; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;
seconded by Pate. Carried.**

B. **Susan Martin**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney. (See No. 14 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 15, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer. OIA concluded that no probable cause exists regarding Petitioner's allegation of political affiliation discrimination by the former District Attorney. The undersigned Investigating Officer, however, concludes that OIA's report contains sufficient information to convene a hearing under the provisions of Rule VI. It is therefore recommended that a hearing under the provisions of Rule VI of the Civil Service Rules will be conducted; that Commissioners Marc Sandstrom and A. Y. Casillas be assigned as hearing officers; that Ms. Martin's Petition to Appeal Selection Process (Rule X) be granted, and the hearing be held in conjunction with the Rule VI hearing; that this hearing be consolidated with and conducted at the same time the hearings are scheduled for all other DDA IV petitioners; that a pre-hearing conference be scheduled to take place July 30, 2003, at 10:00 a.m.; that the Commission approve and file this report with the appended OIA Final Investigative Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;
seconded by Pate. Carried.**

C. **Deborah Thomas**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney. (See No. 14 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 15, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of discrimination based on political affiliation, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that Complainant's request for a Rule X hearing (selection process) be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;
seconded by Casillas. Carried.**

13. Commissioner Sandstrom: **Rick Clabby**, Deputy District Attorney IV, alleging political affiliation discrimination by the former District Attorney. (See No. 15 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 15, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concluded that probable cause exists regarding Petitioner's allegations of political affiliation discrimination by the former District Attorney. The Investigating Officer concludes that a hearing under the provisions of Rule VI will be conducted; that Commissioners Marc Sandstrom and A. Y. Casillas be assigned as hearing officers; that the Petition to Appeal Selection Process (Rule X) be granted, including the petitions of Deputy District Attorneys IV Glenn McAllister, Elizabeth Porterfield, Phyllis Shess, and Terri Wyatt and the hearing be held in conjunction with the Rule VI hearing; that one hearing be conducted for all petitioners; that all November 15, 2002 appointees be invited to attend and participate in any future hearings; that the Commission approve and file this report with the appended OIA Final Investigative Report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations;
seconded by Austin. Carried.**

SELECTION PROCESS

Complaints

14. **Jodi Breton, Kimberly Brown, Chandra Carle, Steven Carver, Karl Eppel, David Hendren, Paul Johnsen, Michele Linley, Susan Martin, Karen McKinley, Stacey Alyn McReynolds, Kelly Rand, Stacy Running, Robert Stein, Laura Tanney, Deborah Thomas, Anne Marie Urrutia; Richard Armstrong, Joanne Evoy, and Robert Kearney**, Deputy District Attorneys III, appealing the selection process used by the DHR and the former District Attorney for the classification of Deputy District Attorney IV

RECOMMENDATION: Take action pending the outcome of the discrimination complaints listed above. (See No. 12 above.)

All Petitions to Appeal Selection Process (Rule X) be granted, including Richard Armstrong, Joanne Evoy, Robert Kearney and the hearing be held in conjunction with the Rule VI hearing, as stated in No. 12 above.

Motion by Sandstrom to grant all Rule X hearings; seconded by Pate. Carried. (See No. 12 above.)

15. **Rick Clabby, Glenn McAllister, Elizabeth Porterfield, Phyllis Shess, and Terri Wyatt**, Deputy District Attorneys IV, appealing the selection process used by the DHR and the former District Attorney for the classification of Deputy District Attorney V.

RECOMMENDATION: Take action pending the outcome of the discrimination complaints listed above. (See No. 13 above.)

The Petition to Appeal Selection Process (Rule X) be granted, including the petitions of Deputy District Attorneys IV Glenn McAllister, Elizabeth Porterfield, Phyllis Shess, and Terri Wyatt and the hearing be held in conjunction with the Rule VI hearing, as stated in No. 13 above.

Motion by Sandstrom to grant the Rule X hearing; seconded by Austin. Carried. (See No. 13 above.)

16. **Mitchell McCormick**, candidate, appealing the selection process used by the DHR for the classification of Human Resources Analyst-General Option.

RECOMMENDATION: Deny Request. (See No. 9 above.)

Staff recommendation approved.

17. **Walt Schmidtke**, Park Ranger, appealing the selection process used by the DPR and DHR for the classification of Senior Park Ranger.

RECOMMENDATION: Continue to the Commission meeting of August 20, 2003 pending input from the parties. (See No. 10 above.)

Continued.

OTHER MATTERS

18. Public Input.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE AUGUST 20, 2003.